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# State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

Outgoing

C0150025

#3270

&

May 14, 2009

## CERTIFIED RETURN RECEIPT

7004 2510 0004 1824 9733

Charles Reynolds  
C. W. Mining  
P. O. Box 1240  
Huntington, Utah 84528

Subject: Proposed Assessment for State Violation No. N10037, C. W. Mining, Bear Canyon Mine, C/015/0025, Outgoing File

Dear: Mr. Reynolds:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above referenced violation. The violation was issued by Division Inspector, Jim Smith, on April 21, 2009. Rule R645-401-600 ET. Seq. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Notice of Violation has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

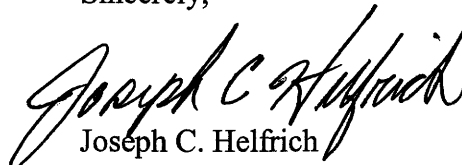
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.



2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment.** Please remit payment to the Division, mail c/o Suzanne Steab.

Sincerely,



Joseph C. Helfrich  
Assessment Officer

Enclosure

cc: OSM Compliance Report  
Suzanne Steab, DOGM  
Vicky Bailey, DOGM  
Price Field Office  
Elliot Finley, Hiawatha Coal Co.  
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Sent To	Charles Reynolds
Street, Apt. No., or PO Box No.	PO Box 1240
City, State, ZIP+4	Huntington UT 84528

PS Form 3800, June 2002

See Reverse for Instructions

**WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS & MINING**

COMPANY / MINE C. W. Mining

PERMIT C/015/0025 NOV / CO # 10037

VIOLATION 1 of 1

ASSESSMENT DATE May 14, 2009

ASSESSMENT OFFICER Joe Helfrich

**I. HISTORY (Max. 25 pts.)**

- A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u># N10020</u>	<u>12/01/2008</u>	<u>1</u>

1 point for each past violation, up to one (1) year  
5 points for each past violation in a CO, up to one (1) year  
No pending notices shall be counted

**TOTAL HISTORY POINTS 1**

**II. SERIOUSNESS (Either A or B)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or HINDRANCE (B) violation? Hindrance

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS \_\_\_\_\_

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS \_\_\_\_\_

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Actual  
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 25

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*According to the inspector statement, "For the Third Quarter of 2008, the Permittee failed to meet the requirements of R645-301-731.200. The Permittee did not have the water sample from SBC-9a analyzed for dissolved lead. Analysis for lead is required at this site because the water discharged through SBC-9A is the culinary water supply for the Bear Canyon Mine, and a battery-powered coal hauler, loaded with lead-acid DC power cells, was buried by a roof-fall near the underground source of this water. The Permittee also failed to analyze for baseline parameters at SBC-16A. For July, flow was not measured at springs 16-8-18-4 and 16-8-18-5 and at stream sites FC-3 and FC-4."

TOTAL SERIOUSNESS POINTS (A or B) 25

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 25

**PROVIDE AN EXPLANATION OF POINTS:**

**\*\*\*According to the inspector statement, "The MRP was specifically amended to require monitoring for lead at SBC-9a. The water discharged from the mine through SBC-9A is the culinary water supply for the Bear Canyon Mine. An unanticipated roof fall in the 1st North section of the Bear Canyon #1 Mine on January 14, 2003 buried a battery-powered coal hauler, loaded with lead-acid DC power cells, near the source of this flow.**

**Because SBC-16a is a newly added monitoring site, quarterly water samples are to be analyzed for baseline parameters from May 2007 through April 2010: baseline parameters were missed during the 3<sup>rd</sup> quarter 2008.**

**In July, required flow measurements were missed at springs 16-8-18-4 and 16-8-18-5 and stream sites FC-3 and FC-4:**

**During the 4th Qtr 2007 there were a number of parameters missed at several monitoring sites, which resulted in NOV 10020.**

**Analysis for lead has been missed at this site in the past, as noted in the Division's Quarterly Water Monitoring Reports for the Fourth Quarter 2007 and First Quarter 2008, and the Division issued NOV 10031 on December 11, 2008 for failure to monitor for lead at SBC-9a during the Fourth Quarter 2007 and First Quarter 2008**

**IV. GOOD FAITH (Max 20 pts.)**

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20\*  
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10  
(Permittee used diligence to abate the violation)
- Normal Compliance 0  
(Operator complied within the abatement period required)  
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20\*  
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- Extended Compliance 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\**There was no abatement required by the violation*

V. **ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # **N 10037**

I.	TOTAL HISTORY POINTS	<u>1</u>
II.	TOTAL SERIOUSNESS POINTS	<u>25</u>
III.	TOTAL NEGLIGENCE POINTS	<u>25</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>51</u>

**TOTAL ASSESSED FINE                      \$ 3410**